

**McGREGOR & ADLER, LLP**

P.O. BOX 710509  
HOUSTON, TEXAS 77271-0509

WRITER'S DIRECT DIAL  
(713)-777-2321  
WRITER'S DIRECT FACS.  
(713)-777-6908  
E. MAIL: BAADLER@flash.net

INTELLECTUAL PROPERTY LAW  
(PATENT, BIOTECHNOLOGY, COMPUTER,  
TRADEMARK & TRADE SECRET LAW)

August 9, 1999

**FACSIMILE COVER SHEET**

PLEASE DELIVER TO: Examiner C. Sayala

COMPANY: U.S. PTO/ ART UNIT 1761

FACSIMILE NUMBER: (703) 305-3602

NUMBER OF PAGES (COUNTING COVER SHEET): 4

FROM: Benjamin A. Adler

MESSAGE: Please deliver the attached to Examiner Sayala. Attached is a Response to Notification of Defective Notice of Appeal or Defective Brief for Methods of Treating Autoimmune Diseases Using Type One Interferons; Serial No: 08/946,710, Brod, S., D5716CIP4)

CONFIDENTIALITY NOTICE: Unless otherwise indicated or obvious from the nature of this transmittal, the information contained in this facsimile is attorney privileged and confidential information intended for the use of the individual or entity named above. If the reader is not the intended recipient or an employee or agent responsible for delivery, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you receive this communication in error, please immediately notify Dr. Benjamin Adler at (713) 777-2321 and promptly return the facsimile. Thank you.

cc: BAA.

#6  
8-10-99  
OW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Brod, S.

§ ART UNIT: 1761

FILED: October 8, 1997

§

SERIAL NO.: 08/946,710

§

FOR: Methods of Treating  
Autoimmune Diseases Using  
Type One Interferons

§

§

§

§

§

EXAMINER:  
Sayala, C.

DOCKET: D5716CIP4

Assistant Commissioner of Patents  
BOX AF  
Washington, D.C. 20231

Certificate of Facsimile Transmission

I certify that this response was transmitted via Facsimile to  
Examiner C. Sayala at the Patent Office on the date indicated below.

9 Aug 1999

Date

Benjamin Aaron Adler

Benjamin Aaron Adler, Ph.D., J.D.

RESPONSE TO NOTIFICATION OF DEFECTIVE  
NOTICE OF APPEAL OR DEFECTIVE BRIEF

Dear Sir:

Responsive to the Notification of Defective Notice of  
Appeal or Defective Brief mailed July 27, 1999, please enter the  
following remarks. Reconsideration of the Appeal Brief filed June  
23, 1999 is respectfully requested.

REMARKS

The Appeal Brief filed June 23, 1999 has been declared defective. The Notification states that the three copies submitted June 23, 1999 are substantially different from a fourth copy submitted December 1, 1998, and it is not clear which copy should be considered.

The first Appeal Brief was actually filed March 12, 1999 in furtherance of the Notice of Appeal filed December 1, 1998. However, prosecution was reopened because this Appeal Brief did not address issues relating to 35 U.S.C. §101 double patenting and judicially created doctrine of obviousness-type double patenting. Thus, the first appeal brief (filed March 12, 1999 in response to the Notice of Appeal filed December 1, 1999) was not a defective appeal brief.

A second Notice of Appeal was filed June 18, 1999 and the second Appeal Brief was filed on June 21, 1999. This Appeal Brief addresses the double patenting and obvious type double patenting issues. As discussed with Examiner Sayala per telephone conversation of July 30, 1999, this is the Appeal Brief which is correct and should be considered. The Applicant respectfully

requests that the rejection of the Appeal Brief filed on June 23, 1999 as defective be withdrawn.

This is intended to be a complete response to the Notification of Defective Notice of Appeal or Defective Brief mailed July 27, 1999. If any issues remain outstanding, the Examiner is respectfully requested to telephone the undersigned attorney of record for immediate resolution.

Respectfully submitted,

Date: 9 Aug 1999

  
\_\_\_\_\_  
Benjamin Aaron Adler, Ph.D., J.D.  
Registration No. 35,423  
Counsel for Applicants

McGREGOR & ADLER, LLP  
8011 Candle Lane  
Houston, Texas 77071  
(713) 777-2321  
[BAADLER@flash.net](mailto:BAADLER@flash.net)